

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

In Re: BRANDI SUE WOODARD,
Debtor.

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Chapter 7
Case No. 06-50394

DECISION AND ORDER

At Harrisonburg in said District this 30th day of November, 2006:

The matter before the Court is the Debtor's Application for Waiver of the Chapter 7 Filing Fee pursuant to 28 U.S.C. § 1930(f). The matter was heard on September 28, 2006, at which time the Court received evidence and heard oral argument. At the conclusion of the trial, the Court made findings of fact and rulings of law from the bench and denied the Application for Waiver of the Chapter 7 Filing Fee. The reasons both stated on the record on September 28, 2006, and herein constitute the findings and rulings of the Court.

FINDINGS OF FACT

On August 31, 2006, the Debtor filed a Chapter 7 voluntary petition for relief. Along with the petition, Debtor also filed an Application for Waiver of the Chapter 7 Filing Fee pursuant to 28 U.S.C. § 1930(f). On Schedule I, the Debtor listed three dependents - an eight year old son, a four year old daughter, and a two year old son - and reported total gross monthly wages of \$649.50. Food stamps received by the Debtor in the amount of \$506.00 per month were added to the monthly wages to arrive at a total combined monthly income of \$1,155.50. Debtor reported total monthly expenses of

\$1,277.00.¹ The 2006 poverty line for a family of three is \$20,000 per year or \$1,666.66 per month; accordingly, 150% of the poverty line is \$30,000 per year or \$2,500.00 per month. *Judicial Conference of the United States Interim Procedures Regarding the Chapter 7 Fee Waiver Provisions of the Bankruptcy Abuse Prevention and Consumer Protection Action of 2005*, August 11, 2005, available at <http://www.uscourts.gov/bankruptcycourts/povertyguidelines.pdf>.

The Debtor's schedules indicated that the Debtor owns no real property. The Debtor reported personal property totaling \$3,026.00 on Schedule B. The Debtor claimed all personal property as exempt. The Debtor's personal property includes child support arrearages totaling \$11,704.42,² although Debtor valued the support at \$2,000.00. At the September 28, 2006 hearing, Debtor's testimony indicated that the father of her children had been unemployed for an extended period of time, which caused the child support arrearage, and that in the weeks before the hearing he had been hired at a fast-food restaurant. Although the Debtor believed this job would lead to future child support payments, she did not believe that any payments would be significant, because the fast-food position did not pay well.

The Debtor's personal property also included Debtor's 2005 tax refund and earned income credit, which Debtor valued at \$1.00. At the hearing, Debtor explained

¹ The itemization of the reported monthly expenses is as follows:
Rent/Mortgage \$500.00; Electricity and Heating Fuel \$100.00; Water and Sewer \$50.00; Home Maintenance and Repairs \$20.00; Food \$ 550.00; Clothing \$ 17.00; Laundry and Dry Cleaning \$20.00; and Transportation \$ 20.00. Total Monthly Expenses were listed as \$ 1,665.00. All other potential expenses provided for on Schedule J were listed at \$0.00.

² Schedule B indicates that the Virginia Division of Child Support Enforcement has filed for collection of back child support in the amount of \$11,704.42 under applicable Virginia law.

that she had yet to file a 2005 income tax return. She went on to explain that she expected a \$1,500.00 refund after she filed and that she wished to spend the refund on a vehicle and school supplies for her children.

LAW AND DISCUSSION

This Court has jurisdiction over the parties and subject matter of this proceeding under 28 U.S.C. §§ 151, 157, and 1334. This is a case filed under title 11, and the Court may hear and determine the outcome of such proceeding under 28 U.S.C. § 157(b). Venue is proper in this District under 28 U.S.C. § 1409(a).

28 U.S.C. § 1930(f) provides the bankruptcy court the authority to waive the filing fee in an individual debtor's Chapter 7 petition filed after October 17, 2005. Because this case was filed on September 28, 2006, § 1930(f) applies. It states as follows:

Under the procedures prescribed by the Judicial Conference of the United States, the district court or the bankruptcy court may waive the filing fee in a case under chapter 7 of title 11 for an individual if the court determines that such individual has income less than 150 percent of the income official poverty line . . . applicable to a family of the size involved and is unable to pay that fee in installments.

28 U.S.C. (f)(1) (emphasis added). On August 11, 2005, the Judicial Conference of the United States promulgated interim procedures to assist in the implementation of this code provision. *Judicial Conference of the United States Interim Procedures Regarding the Chapter 7 Fee Waiver Provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005*, August 11, 2005, available at <http://www.uscourts.gov/bankruptcycourts/jcusguidelines.html> [hereinafter *Interim Procedures*].

The Interim Procedures set forth a two step analysis for determining whether the filing fee should be waived. *Interim Procedures*, Section II.A.1. The debtor has the burden of showing that the application should be granted. First, the debtor's income must be less than 150 percent of the poverty guidelines published by the United States Department of Health and Human Services applicable to a family of the size involved. *Interim Procedures*, Section II.A.1. The "Total Combined Monthly Income" as reported on Line 16 of Schedule I is used for comparison, although non-cash governmental assistance, such as food stamps or housing subsidies, is not included. *Interim Procedures*, Section II.A.3. Second, if the reported income is less than 150% of the guideline, the applicant must be unable to pay the filing fee in installments. *Interim Procedures*, Section II.A.1. In making such a determination, the court should consider the totality of the circumstances. Section II.A.5. No further guidance is provided.

In this case, Debtor has three children and thus a family of four for the purposes of 28 U.S.C. § 1930(f). Debtor's Schedule I lists a total monthly income of \$1,155.50. However, non-cash governmental aid, in the form of food stamps, is not included when determining whether a debtor's total monthly income is less than 150% of the DHHS Guidelines. Therefore, Debtor's relevant monthly income is \$649.50, after subtracting the \$506.00 per month of non-cash governmental aid. In Virginia, 150% of the 2006 DHHS Guideline for a family of four is \$2,500.00 per month. The Debtor's monthly income is \$1,850.00 less than 150% of the DHHS Guidelines. Therefore, Debtor has satisfied the first prong of the two prong test for a waiver of the filing fee pursuant to 28 U.S.C. § 1930(f).

After determining the debtor's income is less than 150% of the DHHS Guidelines, the court must determine that a debtor is unable to pay the filing fee in installments by considering the totality of the circumstance. *Interim Procedures*, Sections II.A.3 & II.A.5. Although, neither the statute, nor the Interim Procedures provide further guidance, other courts have addressed the interpretation of § 1930(f)(1). *In re Lineberry*, 344 B.R. 487 (Bankr. W.D. Va. 2006); *In re Nuttall*, 334 B.R. 921 (Bankr. W.D. Mo. 2005). In *Nuttall*, the court examined at three factors: (1) the type of fee arrangement the debtor had with their attorney, (2) the ability of the debtor to pay the filing fee in installments after taking into consideration the reasonableness of Schedule J expenses, and (3) whether the debtor possessed any assets from which the debtor could pay the filing fee. *Id.* at 924-25.

While, the *Interim Procedures* state that a debtor is not disqualified for a waiver of the filing fee *solely* because the debtor has paid or promised to pay an attorney for a bankruptcy case, the Interim Procedures do not prohibit a court from considering such a payment. In this case, Debtor's schedules and Application for Waiver of the Chapter 7 Filing Fee indicate that the Debtor has paid nothing and has not promised to pay anything to the attorney who filed this case on her behalf.

In determining the reasonableness of the debtor's scheduled expenses, the court in *Nuttall* compared such expenses to the Internal Revenue Service (IRS) guidelines³ that "establish a standard as to expenses which have been accepted by Congress

³ The IRS guidelines are available on the United States Trustee Program website, <http://www.usdoj.gov/ust/eo/bapcpa/meanstesting.htm>.

elsewhere as the starting point in determining reasonableness.” 334 B.R. at 924.

The IRS guidelines are broken down into three groups: Local Housing and Utilities Standards; Local Transportation Expense Standards; and, National Standards for Allowable Living Expenses. The IRS Local Housing and Utilities Expenses - maximum monthly allowance for a family of four living in Harrisonburg, VA is \$1,326.00. The Debtor’s expenses for rent, utilities and home maintenance is \$670.00, which is \$656.00 less than the maximum monthly allowance for Harrisonburg, VA.

The IRS Local Transportation Expense Standard for the south census region, which includes Virginia, for the public transportation costs is \$203.⁴ The Debtor reports monthly expenses for transportation costs totaling \$20. Therefore, Debtor’s public transportation costs are significantly lower than the standard for the south census region.

The IRS National Standard for Allowable Living Expenses, which includes food, housekeeping supplies, apparel and services, personal care products and services, and miscellaneous expenses, for a family of four with a gross income of \$649.50, as indicated on Line 3 of Schedule I, is \$856.00. The Debtor’s expenses for food, clothing, laundry and dry cleaning, recreation, medical and dental expenses, and child care total \$587.00, which is \$269.00 below the national standard.

The court in *Nuttall* also examined whether the debtors possessed any assets from which they could pay the filing fee. 334 B.R. at 924. According to Debtor’s testimony, she has yet to file her 2005 tax returns. Debtor estimates she will receive a

⁴ Debtor owns no vehicle, thus no ownership costs are included in accordance with the IRS Guidelines.

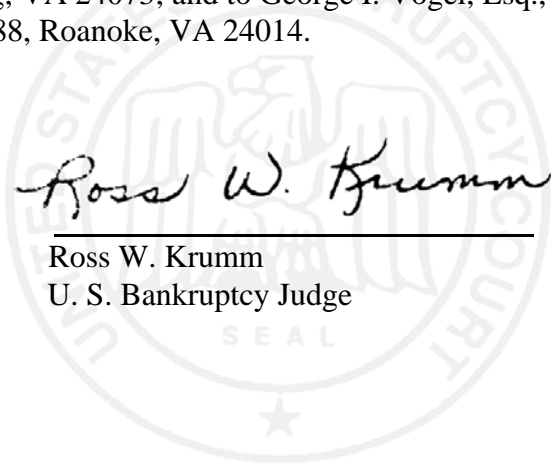
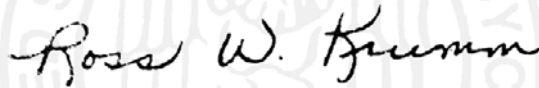
\$1500 tax refund. Upon filing her 2005 tax returns, Debtor will receive a tax refund and have in hand the financial resources available to pay the filing fee. Debtor's tax refund is an asset with which she may pay the filing fee.

CONCLUSION

Because of the availability of the tax refund, the Court concludes that the Debtor has failed to meet the burden of showing that she does not have the financial means to pay the filing fee. Accordingly, it is

ORDERED:

That the Application is denied and that Debtor must pay the Chapter 7 filing fee.⁵ Copies are to be sent to Counsel for the Debtor, Mark S. Lewis, Esq., 155 Arrowhead Trail, Christiansburg, VA 24073; and to George I. Vogel, Esq., Chapter 7 Trustee, at Post Office Box 18188, Roanoke, VA 24014.



Ross W. Krumm
U. S. Bankruptcy Judge

⁵ An order to such effect was entered on September 29, 2006. *See* Docket Entry No. 12.